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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/663,324	09/15/2003	Harold D. Beck	03-11	3791

30699 7590 09/08/2006

DAYCO PRODUCTS, LLC  
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EXAMINER

AUGHENBAUGH, WALTER

ART UNIT PAPER NUMBER

1772

DATE MAILED: 09/08/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action  
Before the Filing of an Appeal Brief**

Application No.

10/663,324

Applicant(s)

BECK ET AL.

Examiner

Walter B. Aughenbaugh

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1772

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 23 August 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.  
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2. ☒ The Notice of Appeal was filed on 21 July 2006. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
(a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ They raise the issue of new matter (see NOTE below);  
(c) ☒ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: see continuation sheet. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
The status of the claim(s) is (or will be) as follows:  
Claim(s) allowed: none.  
Claim(s) objected to: none.  
Claim(s) rejected: 1-4, 6-10 and 20-22.  
Claim(s) withdrawn from consideration: none.

**AFFIDAVIT OR OTHER EVIDENCE**

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11. ☐ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: \_\_\_\_\_.  
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). \_\_\_\_\_  
13. ☐ Other: \_\_\_\_\_

JENNIFER C. MCNEIL  
SUPERVISORY PATENT EXAMINER

9/6/06

## **ADVISORY ACTION**

### ***Acknowledgement of Applicant's Amendments***

1. The After Final Amendment filed August 23, 2006 has not been entered due to the fact that the amendment raises new issues that would require further consideration and/or search. The addition of the recitation "consisting essentially of" to claim 1 requires further consideration and/or search since the combination of a tubular structure comprising about 30 to 75% of a matrix material consisting essentially of an ethylene-vinyl acetate copolymer and about 25 to 70% of one or more of the claimed additives has not been presented in any of the claims in the previous claim sets.

### ***Response to Arguments***

2. Applicant's arguments presented on pages 4-8 of the After Final Amendment filed August 23, 2006 have been fully considered but are not persuasive.

Applicant's statement that "such disclosure was present in canceled claim 6" in the last full paragraph of page 5 of the After Final Amendment filed August 23, 2006 is incorrect since neither claim 6 nor any of the claims upon which claim 6 depended recited "consisting essentially of".

Applicant's statement "applicant has now amended claim 1 to replace the term 'consisting essentially of' with 'comprising'" at the bottom of page 5 of the After Final Amendment filed August 23, 2006 is a misrepresentation of the prosecution history since an amendment where "consisting essentially of" was inserted in claim 1 was never entered.

Applicant has not explained the relevance of the statement "the examiner did not considered the term 'comprising' in claim 1 to be a reason for not entering the Amendment after

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final” at the bottom of page 5 of the After Final Amendment filed August 23, 2006. It is unclear what Applicant means by “appropriate” at the top of page 6 of the After Final Amendment filed August 23, 2006. It is also unclear how whether or not use of the phrase that is the subject of Applicant’s discussion is “appropriate” is relevant.

It is unclear how Applicant’s statement in the sentence bridging pages 6 and 7 of the After Final Amendment filed August 23, 2006 addresses the rejection of record.

In response to Applicant’s statements on page 7 of the After Final Amendment filed August 23, 2006, a terpolymer is a copolymer since a terpolymer is a polymer comprising three types of repeating units (three types of repeating units falls within the criteria for copolymers, which is two or more repeating units).

It is unclear how Applicant’s statement “Actually, Igarashi et al desires that not less than 90% of the vinyl acetate...” on page 8 of the After Final Amendment filed August 23, 2006 addresses the rejection of record.

### ***Conclusion***

3. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Walter B. Aughenbaugh whose telephone number is 571-272-1488. While the examiner sets his work schedule under the Increased Flexitime Policy, he can normally be reached on Monday-Friday from 8:45am to 5:15pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Pyon, can be reached on 571-272-1498. The fax phone number for the organization where this application or proceeding is assigned is to 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Walter B. Aughenbaugh

09/06/06

WBA